STATE OF MICHIGAN

COURT OF APPEALS

MARY ANNETTE CZEWSKI, Plaintiff-Appellant,	UNPUBLISHED January 23, 2007
v	No. 270332 St. Clair Circuit Court
DANIEL EARL DURKEE, Defendant-Appellee.	LC No. 01-002894-DM

Before: Meter, P.J., and O'Connell and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's final decisions regarding child support, child custody, spousal support, property distribution, and attorney fees. We affirm in part, vacate in part, and remand for an evidentiary hearing and the entry of a single order addressing all of the disputed property issues.

The record reflects that plaintiff sued for divorce in October 2001. The litigation at first proceeded quickly, with each side vehemently opposing custody issues. However, following a February 2002 report and recommendation by the Friend of the Court, the parties settled into a parenting time schedule. The report recommended that plaintiff receive sole physical custody, with joint legal custody and liberal parenting time going to defendant. Under the schedule, defendant essentially had the child every Wednesday overnight, alternate Thursday evenings, and every other weekend, and three weeks in the summer. Trial was then repeatedly delayed. The FOC amended its recommendation to add that the trial court should deny plaintiff's request for child support. One trial date in September 2002 was adjourned so that the parties could submit the case to mediation. When that failed, another trial date several months later was adjourned so that plaintiff could change attorneys. The case was submitted to arbitration in the summer of 2003, and on the basis of the arbitrator's findings and conclusions, the trial court entered a divorce judgment granting joint custody and reaffirming the parenting time schedule in the first FOC recommendation. However, the trial court later set aside most of the material elements of the divorce judgment because of procedural irregularities. The only provision that remained viable was the actual divorce. The case then underwent another set of adjournments; a series of cross accusations, motions handled in chambers, and limited stipulations; and another fruitless mediation. Although the parties had agreed on little else, they maintained a stable parenting time schedule that dated back to the original FOC recommendation and had settled on some temporary child support measures.

Even their agreements regarding parenting time began to unravel, however, and by the summer of 2004, defendant moved the trial court to enter a parenting time order. It did, but only as a temporary measure until the FOC could conduct another investigation and issue another report and recommendation. After the FOC issued its revised report, each side objected. But rather than hold trial, on February 4, 2005, the trial court summarily entered another "temporary" order reaffirming joint custody but granting defendant equal parenting time and allowing no further review for a year. This Court peremptorily vacated the review language in the order and remanded for an evidentiary hearing on the custody and child support issues. Unfortunately, the parties and court limited the issues for trial on remand and again bifurcated the proceedings. Following the evidentiary hearings, the trial court essentially reinstituted its February 2005 order, but had not yet resolved any personal property or spousal support issues since the day the divorce judgment was set aside.

This lack of finality led to a serious disintegration of the proceedings. A month before the case's fourth anniversary, the parties were still embroiled in minor parenting time issues like the benefits of full-time and part-time kindergarten. In those four years, the parties had each argued about whether plaintiff's apartment was suitable for their son, and then totally reversed their positions when it promised a new advantage. They each provided evidence that they exchanged harsh words, police charges, various threats, recalcitrant postures, and complaints to the Family Independence Agency. Most importantly, the child had resided in at least four different homes, had known at least four different daycare providers, had grown from infancy to kindergarten, and had spent most of his life in the middle of a prolonged and stalemated tug of war. Yet the trial court had not heard any evidence or argument regarding fundamental divorce issues like the value of the parties' marital assets and the most equitable way to divide them. Although the parties eventually stipulated to the distribution of the two pieces of real property, these agreements only bred more animosity.

In addition to the problems caused by the trial court prolonging final resolution of the issues, plaintiff consistently complicated matters by finding unusual and frequently aggressive ways to assert what she determined were her rights. For example, after the divorce judgment was set aside, she determined that she should be allowed to reclaim the marital home that defendant had singly occupied without incident for more than two years. Therefore, she went to the home, cut a screen, opened a first floor window, and she and her son climbed into the house from the porch. Instead of setting up occupancy, however, she merely left an inflammatory note explaining that she would be moving in soon. The day before trial, she attempted to do just that. With her son inside with defendant and her sister at her side, she again entered onto the property and tried to get into the home. When defendant would not allow her through the door, she walked around to the window she had opened and entered before. When police arrived, she stood her ground and was arrested. While she insists that her child saw the arrest, she has never indicated any regret over her actions, but has accused defendant of placing the child where he could see her arrest. She later sued the officer and defendant for back injuries allegedly associated with the arrest.

Although she claimed the arrest resulted in injuries, she continued to work as an operational manager for her fiancé's delivery business until shortly after the FOC issued its recommendation for joint custody. She then quit her job, claiming that her back problems disabled her and arguing that her newfound daytime availability should garner her more

parenting time while defendant worked. In the end, both sides littered the record with sudden changes in residential, occupational, and educational preferences and possibilities that each side suggested would further the child's best interests, and then they repeatedly balked at the prospect of actually trying the case. It is little wonder that the trial court had difficulty resolving the amorphous arguments and issues.

After it reinstated its parenting time and custody order, the proceedings were again delayed for months. Eventually the trial court set the matter for trial, but then called off the hearing in a bench conference and told the parties to submit the matter on briefs. Without taking any further testimony, the trial court issued an order that resolved the last personal property dispute by entering a decision that was contrary to both briefs and the history of the vehicle dispute. Instead of issuing an Eligible Domestic Relations Order as the facts suggest may be necessary to divide the pension, the trial court ordered that the parties should later submit a Qualified Domestic Relations Order. The trial court then conflated two pieces of evidence, one of which was only admitted for a limited purpose at the evidentiary hearing, and found that plaintiff signed a sworn affidavit that she earned more than $72,000 per year as her fiancé's operational manager. At the hearing, she insisted that the application's unattested figure optimistically predicted her future earnings and did not accurately reflect her actual income from the delivery company. The "sworn affidavit" was apparently a verified statement plaintiff provided the FOC nearly 2 ½ years earlier in which she admitted that she earned $390 per month as a hairdresser. The order did not address attorney fees, dower rights, or insurance. A later order regarding attorney fees was issued without a hearing. It relied on the same $72,000 figure in denying plaintiff's request for attorney fees.

Plaintiff first argues that the trial court erred by granting the parties joint physical custody rather than granting her sole custody. We disagree. We will affirm a custody order "unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28; see also *Hayes v Hayes*, 209 Mich App 385, 389; 532 NW2d 190 (1995).

In this case, the trial court had issued a temporary order in February 2005 that adjusted defendant's parenting time upward to an equal one-week-on, one-week-off, parenting schedule during the school year and alternating two-week periods through the summer. The parties followed that schedule at the time of the trial court's disposition. Under the circumstances, the trial court's finding that the parties had established a shared custodial environment is not against the great weight of the evidence.

Once the trial court found that an established environment existed, plaintiff was charged with the burden of demonstrating by clear and convincing evidence that changing custody was in the child's best interests. *Foskett v Foskett*, 247 Mich App 1, 6; 634 NW2d 363 (2001). Generally, a trial court must consider and explicitly state its findings and conclusions regarding each best interest factor on the record. *Foskett*, *supra* at 9; see also MCL 722.23, MCL 722.26a(1). Although the findings do not need to be elaborate or exhaustive, *Foskett*, *supra* at 12, they must be thorough enough to allow an appellate court to determine whether they run contrary to the great weight of the evidence. *MacIntyre v MacIntyre (On Remand)*, 267 Mich App 449, 452; 705 NW2d 144 (2005).

In this case, the trial court made express findings on each of the best interest factors and clearly determined which factors favored one side and which favored neither side. In the end, the trial court determined that the established joint custodial environment and parenting schedule was in the child's best interests and should continue. The findings are not elaborate, but they are sufficient to demonstrate that the evidence supported the trial court's decision. Therefore, we will not disturb the trial court's custody, parenting time, and best interests determinations.

Plaintiff argues, however, that the trial court merely reinstated its earlier, overturned order, failing to account for the custodial environment established during the marriage and continuing until the trial court entered its conclusory order. However, a trial court's determination regarding a child's established custodial environment does not turn on the legitimacy of its establishment. "Rather, the focus is on the circumstances surrounding the care of the children in the time preceding trial, not the reasons behind the existence of a custodial environment." *Hayes*, *supra* at 388. "The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort." MCL 722.27(1)(c). Joint custody is established when the child looks to both parents for these benefits. *Jack v Jack*, 239 Mich App 668, 671; 610 NW2d 231 (2000). Even if we ignored the custodial environment established by the trial court's improper "temporary" order, plaintiff fails to demonstrate that the trial court's findings ran contrary to the great weight of the evidence. The record reflects that defendant had substantial parenting time with his young son during the marriage while plaintiff worked and shortly after the divorce according to the followed FOC recommendation. He enjoyed six evenings a week with the child over every two-week period. He had stable living arrangements, spending the first two years of the proceedings at the parties' marital home and then moving to another house nearby so that plaintiff and the child could occupy the marital home. Under the circumstances, the trial court's finding that defendant had established a custodial environment with the child was not against the great weight of the evidence.

While this appeal was pending, the parties consented to the child's placement in public school, so plaintiff's arguments against the trial court's schooling order have already been resolved by stipulation of the parties.

Plaintiff next argues that the trial court erred by failing to hold an evidentiary hearing on the remaining issues, including pension, dower, personal property, spousal support, and attorney fees. We agree that she was entitled to a trial on all these unresolved and disputed issues. *Redding v Redding*, 214 Mich App 639, 645-646; 543 NW2d 75 (1995); *Watson v Watson*, 204 Mich App 318, 321; 514 NW2d 533 (1994); *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999). We further acknowledge that piecemeal resolution of divorce cases has long been a condemned practice, *Yeo v Yeo*, 214 Mich App 598, 600-601; 543 NW2d 62 (1995), and that every divorce judgment must contain:

> (1) the insurance and dower provisions required by MCL 552.101;
>
> (2) a determination of the rights of the parties in pension, annuity, and retirement benefits, as required by MCL 552.101(4);
>
> (3) a determination of the property rights of the parties; and

(4) a provision reserving or denying spousal support, if spousal support is not granted; a judgment silent with regard to spousal support reserves it.. [MCR 3.211(B); see also *Yeo*, *supra*].

Anticipated settlement by the parties is no excuse for failing to organize the various facets of a divorce proceeding into one, final judgment. *Dobrzenski v Dobrzenski*, 208 Mich App 514, 515-516; 528 NW2d 827 (1995). The trial court's final two orders were issued without hearings and left out any reference to insurance and dower. Although the first order demanded that the parties submit a QDRO, it was not itself an order dividing the pension, and the record does not reflect that a QDRO or EDRO, see *Mixon v Mixon*, 237 Mich App 159, 166; 602 NW2d 406 (1999), was ever submitted. The factual findings were spotty and provided no basis for review. Therefore, we remand for the trial court to hold an evidentiary hearing on all the matters contained in MCR 3.211(B) and on attorney fees, and direct the trial court to consolidate the issues into one judgment finally disposing of this case. See *Dobrzenski*, *supra*. Of course, this provides defendant with an opportunity to present evidence of his claim that plaintiff should pay him the discrepancy in the value of the parties' vehicles.

Finally, we have not disturbed the trial court's findings or rulings so much that the trial court would have difficulty judiciously applying our opinion on remand, and reassignment to a new judge would require extensive unnecessary duplication and would constitute a waste of substantial judicial resources. *Bayati v Bayati*, 264 Mich App 595, 602-603; 691 NW2d 812 (2004). Therefore, we reject plaintiff's request for reassignment on remand.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis